INTERIM REPORT ON THE LATE OPENING OF POLLS IN ETOBICOKE-LAKESHORE

November 17, 1987

INTRODUCTION

Shortly after the opening of polling on Thursday, September 10, the Chief Election Office began to receive reports that a number of polling places in the electoral district of Etobicoke-Lakeshore had failed to open as scheduled at 9:00 a.m. Upon receiving this information Warren Bailie, Chief Election Officer, went to the Returning Office and was informed by the district's Returning Officer, Mrs. Helen Wursta, that poll officials in about 30 polls had failed to report to their locations and perform their duties.

Measures were taken to open the polls as soon as possible. Some late opening polls were combined with other polls established in the same location. Other polls were manned with officials recruited from the political party organizations.

Pursuant to s. 40 (4) of the Election Act the Chief Election Officer ordered that the time for voting be extended to 9:30 p.m. at the late-opening polls for the benefit of electors who were unable to vote upon their arrival earlier in the day.

On September 17 the Chief Election Office announced an investigation into the late opening of polls. Although the investigation is still continuing, this report presents its findings to date and in particular, the finding, pursuant to s. 88 of the Act, that the late opening of polls in Etobicoke-Lakeshore was not caused by corrupt practices or Election Act offences committed by or on behalf of any candidate or political party.

THE INVESTIGATION

The investigation has been conducted under the direct supervision of the Chief Election Officer and with the assistance of an investigative unit of four people with experience in the administration, organization and conduct of elections in Ontario. To date a total of 68 persons have been interviewed and all documentation related to the late opening of polls in Etobicoke-Lakeshore in the possession of the Chief Election Office has been reviewed.

The investigation began on Election Day when Mrs. Wursta was asked to provide the names of the poll officials who failed to report to late-opening polls. By September 16, the names had not been received and Mrs. Wursta was requested by letter to provide a complete list of names, addresses and telephone numbers of the non-reporting poll officials along with copies of their form F404s. (Form F404 is the document by which the government of the day and the candidate representing the opposition party with the highest number of votes in a district in the previous election may recommend deputy returning officers and poll clerks respectively pursuant to s. 39 (1) of the Election Act.)

At the end of September this information had not been received from Mrs. Wursta. She was instructed in a letter hand-delivered to her home on October 2 to provide the information previously requested within five days. In a telephone discussion thereafter, Mrs. Wursta stated that providing the names would impede her investigation. On October 20, Mrs. Wursta was informed in a letter delivered by hand that legal counsel had advised that her compliance with this request would in no way prejudice her investigation. She was instructed to provide, no later than 5:00 p.m.,

Thursday, October 22, a copy of the appointment and signed oath of any poll official who failed to attend to his or her duty on Election Day. At this point it was necessary to remind Mrs. Wursta of her responsibility under subsection 7(8) of the Act to comply with any instruction received from the Chief Election Officer.

At this time the special unit of four persons was assigned exclusively to the investigation. The unit was made responsible for examining the poll materials in the possession of the Chief Election Office, interviewing persons likely to have relevant information, and assessing the information obtained in such interviews.

On October 22 a letter was received from Mrs. Wursta enclosing form F226s recording the appointment of eight poll officials said to have "failed to attend to their duty on election day, or resigned on short notice".

As the non-performance of eight individuals could not have caused the late opening of thirty polls, Mrs. Wursta was instructed in a letter delivered by hand on October 29 to provide a list of the poll officials originally appointed for or assigned to the late-opening polls no later than 4:30 p.m. on Monday, November 2.

On November 2 a letter from Mrs. Wursta was received stating her unwillingness to comply with this request but enclosing a chart showing the number of replacements or reassignments of officials made in each poll during the campaign. Mrs. Wursta stated that an unusually high

number of replacements and reassignments had consumed time and resources that otherwise would have been used to assign officials to the polls that were left unmanned.

The eight persons identified by Mrs. Wursta as having failed to perform their duties were interviewed. As the investigation proceeded alternative sources of information were identified. The poll records of all late-opening polls were examined.

Interviews were sought with all persons identified in the poll records as having been assigned, even temporarily, to polls that eventually opened late and not working in them on Election Day.

Where polls were left unmanned on the morning of Election Day, the deputy returning officers who were eventually assigned to fill these gaps were interviewed to determine the circumstances in which they were reassigned, the time the poll opened, and the degree of inconvenience suffered by the voters. The campaign managers for the New Democratic Party, Liberal and Progressive Conservative candidates and the candidate of the Family Coalition Party were interviewed to get their assessment of the problem and to seek the names of campaign workers with further information.

Individuals who called or wrote the Chief Election Office after the election to report their knowledge of, or concern about, the late-opening polls were interviewed.

The Interviews

(a) Names provided by Mrs. Wursta

The eight persons named by Mrs. Wursta were interviewed, seven personally and one by telephone. Because these are the only people alleged to be non-performing or late-cancelling officials, their interviews will be recounted in detail.

The first of the eight to be interviewed stated that she attended a training session at the Returning Office on Sunday, September 6 and was sworn in as a poll clerk. She was not told at that time the number or location of the poll she would be assigned to or who the deputy returning officer for the poll would be. She was informed that she would be telephoned with that information before the election. On Wednesday, September 9 she was telephoned by an official from the Returning Office at about 8:00 p.m. and asked why she had not picked up her materials to act as a deputy returning officer. She explained that she was to be a poll clerk and not a deputy returning officer and that the greater responsibilities of a deputy returning officer were more than she wished to assume. After some discussion, she was told that she would be telephoned again later that evening with information about her poll number and location. No one telephoned her with this information. She stated that she then assumed that she would not be assigned to any poll, perhaps because no additional poll clerks were needed so close to the election. No one suggested to her that she should refuse to perform her duties and she did no political work for any party or candidate on Election Day.

The second of the eight interviewed was sworn in as a deputy returning officer and trained on Sunday, September 6. She stated that she decided the next day, Monday, September 7, that for health reasons she did not want to commit herself to a position that would require her to be fixed in one place for twelve or more hours on Election Day. She stated that she returned her materials to the Returning Office that day and was informed by Mrs. Wursta that her resignation would cause no problem because there were more people applying for positions as deputy returning officers than slots available. She stated that Mrs. Wursta thanked her for returning her materials in good time. No one suggested to her that she should resign her position and she did no work for any party or candidate on Election Day.

The third of the eight interviewed stated that she was trained and sworn in as a poll clerk on a date she could not recall but sometime in the last few days before the election. (Tuesday, September 8 seems from external evidence to be the most likely day.) She was told that she would be called the next morning and given her poll number and location. She stated that she was never called with this information, but called the Returning Officer on Election Day and was told that she might not have been assigned any poll because they had enough poll clerks. No one suggested that she not work as a poll official and she did no work for any political party or candidate on Election Day.

The fourth of the eight interviewed said that a few days before the election she heard that the Returning Office needed poll officials and applied, was sworn in as a poll clerk and trained on Tuesday, September 8.

She was told that she would be called on Wednesday with her poll number and location. Not having been called by evening, she telephoned the Returning Office and was given a poll number and location. She inquired about arrangements for voting by transfer as she would be unable to vote in her home poll and had not voted in the advance poll, not knowing that she would be working elsewhere on Election Day. She stated that she was told by the official at the Returning Office that it was too late for voting by transfer to be arranged. After this telephone conversation she gave the matter some thought and decided that she would not serve as a poll clerk if she would lose her franchise as a result. She telephoned the Returning Office and notified them of this. She stated that she only decided not to work because of her unwillingness to lose her right to vote compounded by her feeling that the Returning Office was being unhelpful in refusing to resolve a problem caused by their failure to contact her until late Wednesday night. No one suggested to her that she should resign and she did no work for any party or candidate on Election Day.

The fifth of the eight interviewed was sworn in as a poll clerk and trained on Sunday, September 6. She was not given her poll number or location, being told that someone would call her with that information. No one did. She stated that she did not call the Returning Office and inquire about her poll location because she expected them to call and assumed that if she were not called it would be because she was not needed, as she had understood from the training session on September 6 that more people had applied to be poll clerks than were needed. She was ready to work on Election Day had she been telephoned as late as Wednesday night. She did no political work for any party or candidate on Election Day.

The sixth of the eight interviewed was trained as a deputy returning officer and sworn in on Sunday, September 6. He was told that he would be telephoned and told his poll number, the name of the person he would be working with, and when to pick up his materials. He heard nothing from the Returning Office on Tuesday. On returning home late Wednesday night he received a message indicating that an official of the Returning Office had called at 9:00 p.m. An official from the Returning Office called him at 1:00 a.m. on Election Day and requested him to pick up his materials. He refused to do so and stated that he would not work as a deputy returning officer. He said that his reason for not working was that he felt that there was not enough time between 1:00 a.m. and 9:00 a.m. for him to acquaint himself with his materials and prepare for his duties. He did no political work for any party or candidate on Election Day.

The seventh of the eight was interviewed by telephone. She was trained as a poll clerk and sworn in on Sunday, August 30. She was told that someone would call her with her poll number and location. At 10:00 p.m. on Wednesday, September 9, not having heard from anyone, she telephoned the Returning Office to find out her assignment. She was given a poll location but found that it would take two transfers on public transit for her to travel there. She refused the assignment and informed the Returning Officer. She telephoned the deputy returning officer who was to work in the same poll to notify her and discovered that the deputy returning officer had been attempting to contact her but had been given an incorrect telephone number by the Returning Office. No one suggested to the interviewee that she not work as a poll clerk and she did no political work for any party or candidate on Election Day.

The eighth person to be interviewed was sworn in as a poll clerk and trained on Sunday, September 6. She was told that the deputy returning officer in her poll would contact her before the election to tell her the poll and location. She called the Returning Office on Monday and Tuesday to get this information and was told to be patient and await a call from the deputy returning officer. Wednesday evening, having received no call, she phoned the Returning Office but the line was busy. She was ready to work if assigned on the morning of Election Day. At about 9:15 a.m. she was called by a deputy returning officer asking why she had not reported to her poll and asking her to be there within five minutes. She said that it was impossible for her to be there in that time as she lives in a distant part of metropolitan Toronto and it would have taken her at least an hour to travel to the polling place. The deputy returning officer thought that that would be too late to be of help and the interviewee did not work in any poll. No one suggested to her that she not work as a poll clerk.

(b) Names derived from examination of the Poll Record

In order to interview other persons whose late cancellation or non-performance might have been related to the late opening of polls, the poll records for all known late-opening polls were examined. Each completed poll record should have affixed to its inside front cover a Form F226 containing the names of the poll officials first appointed, their replacements if any, their signed oaths as poll officials and the signature of the Returning Officer or other official administering the oath.

Completed Form F226s were found for six of the thirty late-opening polls. Partially completed form F226s appointing one poll official were found for another four late-opening polls. The persons originally listed as poll officials were interviewed by telephone or in person as seemed appropriate. Eight persons listed on the form F226s as having been appointed in late-opening polls in fact worked as poll officials in other polls that opened without problem on Election Day. These eight people may have been transferred from one poll to another and never replaced, or may have been assigned to two polls through inadvertence. Two of the sixteen were among the eight names provided by Mrs. Wursta. Four of the sixteen said when interviewed that they had never been contacted and given poll assignments. One of the sixteen attended at her polling place on time to serve as poll clerk but found no deputy returning officer or poll materials there. After her poll was united with another poll established at the same location she was reassigned to work as poll co-ordinator. One of the sixteen stated that she resigned from her position on Tuesday, September 8 after having waited one and one-half hours in a line-up to pick up materials and then told that she was not listed as a poll official and would have to return later in the day.

(c) Deputy returning officers working in late opening polls

The deputy returning officers who worked in the late-opening polls were interviewed, in most cases by telephone. Most of these interviewees were first assigned to other polls that opened on time before being united with late-opening polls after voting began. These people generally had limited knowledge of why the polls had failed to open on time but were able to

provide information about the circumstances under which the problem was reported to the Returning Office, the means by which it was solved, and the degree of inconvenience to the electorate. These interviews also generated other accounts of late notification of assignments and long waits for distribution of materials.

In the course of interviewing poll officials who did work on Election Day, some accounts of possible irregularities unrelated to the late opening of polls have been heard. Separate investigations of these possible irregularities are continuing.

(d) Persons resigning from other polls

In her letter of November 2, Mrs. Wursta suggested that the high rate of resignations of poll officials in the last few days before the election required her staff to spend an unusually large amount of time replacing previously appointed and assigned poll officials. Replacements were assigned for these people immediately from the pool of people yet to be assigned to polls, exhausting that pool prematurely and thus indirectly causing the late opening of other polls.

Mrs. Wursta supplied a chart showing the number of replacements or reassignments of poll officials made during the whole election period. According to this chart 88 replacements or reassignments were made. Names of the resigning or replaced poll officials were not provided.

The poll records for the polls in which replacements or reassignments were indicated were examined. Sixty changes to the original appointments were found on the form F226s. The other twenty-eight reassignments or replacements were not reflected in the poll records, possibly because they occurred before the form F226s were prepared or because new form F226s were prepared for polls in which there was more than one replacement for a position.

The sixty examples of replacements or reassignments were further analyzed. In eight cases a poll official was originally assigned as a deputy returning officer and then moved to poll clerk or vice versa. In twenty-three cases a person originally listed in one poll worked in a different poll on Election Day, suggesting that no cancellation or resignation was involved. Thirteen of the changes involved people whose reasons for not working have already been related. Another three changes involved duplication of names or simple corrections of names. Thirteen names were left of persons who might have resigned late and thus contributed indirectly to the late opening of polls.

Three of these thirteen people have not been contacted to date. Five of these thirteen resigned, for various reasons, on or before September 6 and thus could not have contributed to any problems caused by late resignations. One person was informed of her poll number and location at about 9:00 p.m. on Wednesday, September 9 and refused her assignment at that time. Four persons resigned on September 9 citing health reasons. While such late resignations are a source of difficulty to a returning

officer, they would not have contributed substantially to the late opening of thirty polls.

(e) Other sources of information

The campaign managers of the New Democratic, Liberal and Progressive Conservative parties were interviewed. These interviews provided useful background information, but no information connecting the late opening to any partisan activities of any party or candidate.

CONCLUSIONS

Extent of problem

There is no way to determine precisely the number of electors who were inconvenienced by the late opening. The best evidence available seems to be the accounts and estimates of officials in polls that opened without problem and were established in the same location as late-opening polls. Comparison of these accounts suggests that about 300 electors were initially turned away from the polls because of the late opening. By the estimates of these poll officials, perhaps 50 percent of those turned away initially returned and voted later in the day, leaving perhaps 150 electors who were unable to exercise their franchise because of the late opening of polls.

While the deprival of the right to vote of 150 electors is an extremely serious matter, it cannot have affected the outcome in the electoral district of Etobicoke-Lakeshore on September 10.

No corrupt practices

The primary purpose in reporting at this time is to state the finding that the late opening of polls in Etobicoke-Lakeshore was not caused by corrupt practices of Election Act offences committed by or on behalf of any party or candidate. Any such interference with the democratic process would, of course, be of paramount public concern. No evidence of any attempt to delay the opening of polls for partisan purposes has been identified. One instance of a poll official supposedly resigning at the last minute in order to work as a scrutineer for a political party on Election Day was reported by Mrs. Wursta. This report has been investigated and is unfounded. The report seems to have originated in a confusion of names.

Nothing in the interviews conducted, the party affiliations of the officials who resigned their position, or the location of the late-opening polls points toward partisan joint action.

Much of the information obtained suggests that prospective poll officials, after being instructed to await telephone notification of their poll numbers and locations, were notified very late on Wednesday or not at all. In addition, no documentation has been received from Mrs. Wursta to demonstrate that poll officials were ever assigned to the late-opening polling places. The information received to date suggests the possibility of serious administrative problems in the Returning Office on Tuesday, September 8 and Wednesday, September 9.

Now that it has been established that the late opening of polls was not caused by corrupt practices or Election Act offences and did not affect the

outcome of the election, the investigation into the detailed causes of the problem will continue. It is essential that everyone involved has a full and fair opportunity to present their views before making further findings in this regard. The continuing investigation will be an important component of the review of problems in the electoral process carried out after every election.

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